# SPEECH

OF

# HON. W. S. FEATHERSTON, OF MISS.,

ON

# THE CLAIM OF THE REPRESENTATIVES OF GEORGE GALPHIN.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, WEDNESDAY, JULY 2, 1850.

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# THE GALPHIN CLAIM.

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On the Report of the Select Committee upon the conduct of the Secretary of War in connection with the Galphin claim—

Mr. FEATHERSTON said:

Mr. SPEAKER: As a member of the select committee, appointed to investigate this claim, and the conduct of the Secretary of War in relation thereto, I feel it to be my duty to submit a few remarks to the House before we proceed to vote on the resolutions now under consideration. Gentlemen who have preceded me, in this discussion, for the claim and the claimants, have wandered far from the issue or questions now before this body to be determined. They seem to act upon the presumption that the only question involved in this controversy is, whether the claim of George Galphin was an honest and just demand. This might be conceded, and yet the United States would be under no obligations to pay it; for, whilst the General Government is bound to pay its own just debts, I have yet to learn that it is also bound to pay the debts which one of its citizens may hold against another, or against one of the States of the Confederacy. They have labored to establish the justice of the claim without directing their attention to the liability of the General Government, prior or subsequent to the passage of the act for Galphin's relief, in August, 1848. The questions raised by the report and resolutions of the investigating committee, and now under consideration, are the following:

1st. Was the debt of George Galphin a just demand against the United States, prior to the passage of the act of Congress of August, 1848?

2d. Did that act authorize and require the late Secretary of the Treasury to pay the debt—the principal?

3d. Did that act authorize the payment of interest on the claim?

These are the points in issue, to which I shall call the attention of the House. They involve principles of great moment, and will, in their adjustment, form precedents, for good or evil, in the administration of the Federal Government hereafter. We should, therefore, approach them with the view of eliciting the truth, exposing error, and establishing principles of sound policy. Gentlemen will not be permitted to change the issues to suit their own purposes, but forced to meet them as they are. The two gentlemen from Georgia [Messrs. TOOMBS and STEPHENS] should have made their speeches upon the justice and merits of this claim two years ago, August, 1848, when the bill for the payment of Galphin's debt was pending before this House. Then they would have been appropriate, and words spoken in due season; now, they seem to be out of time and out of place. Had they been made then, and the merits of this claim brought before the House, the difficulties by which we are now surrounded, and in which their friends are involved, would have been avoided, and, in my judgment, neither the principal nor interest of Galphin's debt would have been paid out of the national Treasury.

Here Mr. F. yielded the floor temporarily to Mr. STEPHENS for explanation.

Mr. STEPHENS said, he had not spoken on the case when the bill passed the House in 1848, because no one objected to its passage. He took the bill as it came from the Senate, and no member of the House objected to its passage.

Mr. FEATHERSTON resumed. True, sir, no member of this body objected to the passage of the bill, for the obvious reason that none, save the committee to whom it was referred, and the friends of the claimants, knew anything about the bill or its merits. But there is one thing that you should have known, that if your friends, Crawford and Galphin, expected to get interest on this debt, the bill as it came from the Senate and passed

this House was imperfect and required amendment. Why did you not raise the question then, as to the payment of interest; amend the bill, settle the question, and order and authorize the Secretary to pay it? You must have known—every member of this House must know—that, as a general rule, the Government does not pay interest on its debts. Hence the necessity of your having amended the bill so as to take this case out of the general rule against interest. By taking this course then, you would have saved the Secretary of War of much trouble and opprobrium, but at the same time deprived him (in my judgment) of a fee of upward of one hundred and fifteen thousand dollars. Whilst the former was desirable, the latter was not. Hence the non-action policy which seems to be very popular with this Administration, was adopted in this case also. Having permitted the bill to pass, without amendment, without raising or settling the question of interest, both the parties and their friends should have remained silent on this occasion. Whether interest should be paid on this debt, which gentlemen on the other side of the House say was founded in justice and equity, and of revolutionary origin, was a question for Congress to decide, and not the Cabinet officers of this Administration. The Constitution refers it to the former, not the latter.

But, sir, the gentleman from Georgia [Mr. STEPHENS] says, that I, with sixty other members of this Congress, were also members of the last, and ought to have opposed this bill, if the claim was not good against the United States. I was a member of the last Congress, and was not aware until after the beginning of this session that such a claim had an existence. Neither Galphin, his claim, or his revolutionary services were mentioned in the last Congress, within my knowledge or recollection. It certainly passed in more silence than any claim ever did that has since produced so much excitement. And I suppose I was as regular in attending the sittings of the House as any other member—a fact that can be established by the journals. I trust, too, that I was attentive to the proceedings when there. Why is it, then, that I, in common with nearly all the members of the last Congress, heard nothing and knew nothing of this claim? The rules of the House require bills introduced, as well as bills coming from the Senate, to be referred to appropriate committees. This bill was referred to the Committee on the Judiciary. It was, therefore, the duty of that committee to investigate it thoroughly—a duty imposed on them by the rules of the House—and report it back to the House, with the recommendation that it should or should not pass. The members of that committee, and the friends of the claimants, I suppose, were the only members of the last Congress who knew anything of it, and upon them the responsibility, and the whole responsibility, rests for permitting this bill to pass. I was not a member of that committee, neither required, nor expected to know anything of this claim, unless its merits had been opened up by discussion in the House—something that should have been done. This rule of the House, referring different bills and claims to different committees, results from necessity. There are now, I suppose, not less than two hundred claims for allowance and payment (such as Galphin's) before Congress. No one member of the House could examine all that are presented during the session, if he were to devote his whole time and attention to them, by withdrawing from the House and postponing all other duties. Hence the rules require them to be referred to different committees, and the labor and responsibility thus to be divided between the different members. No one knows this better than the gentleman from Georgia. Hence the injustice of the insinuation, that all the members of the last Congress were familiar with the facts of this case, and prepared to oppose the bill. But the advocates of a desperate cause are sometimes forced to resort to desperate expedients.

Again, sir, the gentleman from Georgia argues at some length to show that the gentleman from Ohio [Mr. SCHENCK] is wrong in his position, that there was an improprie y and indelicacy in Mr. Crawford's becoming a member of the Cabinet and sustaining the relation he did to this claim pending before one of his colleagues for settlement. Let us compare the opinion of the gentleman from Georgia some eighteen months ago with the one he now holds, and see what "a change has come over the spirit of his dream." Robert J. Walker, late Secretary of the Treasury, testifies thus before the Committee of Investigation:

"I think the first time I saw Mr. Crawford was in February, 1849. He then urged me very strongly to decide this case, (Galphin's.) After some conversation, I stated that I had no difficulty about the payment of the principal, but that my impression was against the allowance of any interest. He stated some reasons in favor of allowing interest, which did not make any strong impression on my mind. He again urged me to decide the whole claim for principal and interest. I did not then understand the cause of Mr. Crawford's urgency for a decision by me. A day or two afterwards, I met by appointment Messrs. TOOMBS and STEPHENS, from Georgia, (then members of Congress,) to whom I stated that my opinion was in favor of paying the principal of the claim, but that I should prefer that the person to whom Congress had directed the money to be paid, should take out letters of administration in this District. After some discussion on this point, and being satisfied that the person named in the act of Congress as executor was also recognized as executor by the laws of South Carolina, which were applicable on that point in this case

I determined to pay the money to that person, in obedience to the direction of Congress. They (Messrs. STEPHENS and TOOMBS) then stated to me there was a peculiar reason bearing upon Mr. Crawford, why the whole case should be fully decided before I retired from the Cabinet. They did not state the reason, but I drew the inference at that time that Mr. Crawford would become Secretary of the Navy in the succeeding Cabinet, and therefore wished the case decided by me."

Mr. E. T. Montague, formerly a clerk in the Treasury Department, says in his examination before the committee, as follows:

"*Question* 7. Had you any conversation with Mr. Crawford in relation to the Galphin claim?

"*Answer* 7. I had at a visit of courtesy, not sought by him, shortly after Mr. Crawford became Secretary of War; the substance of which is as follows: I asked Mr. Crawford, if the question of interest in the Galphin case had ever been finally settled; and upon learning that it had not, I then inquired whether he did not intend to prosecute it further? He said he did not know; that being himself then connected with the Administration, he had some thought of disposing of his interest in the matter."

From the testimony of these witnesses, it will be seen, that in February, 1849. before Mr. Crawford entered the Cabinet, he and Messrs. TOOMBS and STEPHENS all thought as Mr. SCHENCK now does—that there were objections to Mr. Crawford's assuming the position which he now occupies. But things have changed since that time, and it seems that men's opinions have changed with them. Mr. Crawford and his friends then thought, I have no doubt, that to receive a Cabinet appointment was a high honor, and to get a fee of one hundred and fifteen thousand dollars was not an ordinary business, and that to unite both in the same person would be a grand achievement. The temptation was too great for him to be turned aside from his path, and defeated in this object by mere questions of delicacy and propriety. Having shown what the opinions of these gentleman were, on this point, some eighteen months ago, I will leave them to account for their present position. I will now proceed to the examination of the question, Was the General Government under any obligations to pay Galphin's debt, prior to the passage of the act of 1848, either legal, equitable, or moral? To this question, in view of all the facts, but one answer, in my judgment, can be given—it was not.

A brief examination of the grounds on which the Attorney General, Mr. Johnson, and the advocates of the claim on this floor, base the liability of the United States will be conclusive on this point. Before stating the first ground, it will be necessary to give a short history of the claim, to render the point intelligible In giving this history, I shall adopt the statement of facts made by the majority of the committee in their report:

"Prior to the year 1773, George Galphin, the original claimant, was a licensed trader amongst the Creek and Cherokee Indians in the province of Georgia. These Indians became indebted to him and other traders in large sums of money. George Galphin held against them demands, in his own right and as assignee of other traders, The Indians are represented to have been destitute of the means of paying these debts without selling a part of their lands, and in 1773 they ceded for that purpose, to George the Third, King of Great Britain, a tract of healthy and fertile country, containing about two million five hundred thousand acres. The trust was accepted, and commissioners were appointed to sell the lands and pay the debts to the traders. The lands were considered ample for that purpose, but the King carefully protested that the Government of Great Britain should not be liable for any part of the debts of the traders, in the event of the lands producing an insufficient fund. In that case they agreed to lose in proportion to the amount of their debts. The traders, in consideration of the cession of the lands by the Indians, released their demands against them. Commissioners were appointed to sell the lands and apply the proceeds to the payment of the debts. The governor and his council ascertained the sums due the traders respectively, and found due to George Galphin, nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence. For this sum a certificate was issued to him, dated the second day of May, 1775. The commissioners disposed of a portion of the lands, but how much does not appear, and applied the proceeds to the payment of expenses which had been incurred in making the cession, and in performing their duties under it. They applied none of the money to the debts of the traders. George Galphin received nothing from them. Mean time the war of the Revolution commenced, and by its successful result the execution of the trust was defeated, and the lands themselves were no longer subject to the control of the King.

"The State of Georgia, in 1777, and subsequent years, granted to actual settlers, and to soldiers who had been faithful to the cause of independence, considerable portions of her vacant lands, including the lands which had been ceded by the Indians for payment of their debts to George Galphin and others. But no means are accessible of ascertaining the quantity or value of these, or the other vacant lands which Georgia granted as bounties to revolutionary soldiers, although there is evidence that a considerable portion of the lands ceded by the Creeks and Cherokees in 1773, was thus applied."

The foregoing facts establish that the Creeks and Cherokees conveyed by the treaty of 1773 all the title and interest which they had in these lands to the British Crown, and that the British Crown became bound to sell them, and apply the proceeds to the payment of the debts of the Indian traders, Galphin and others. The Indians were divested of all title to the lands, and forever released from the payment of the debts by the treaty. The revolutionary war changed the relations of the parties. Great Britain was divested of her title to the lands, and prevented from disposing of them by the war. Georgia acquired all the rights and incurred all the liabilities which rested upon or belonged to Great Britain prior to the Revolution, under the treaty of 1773. How did Georgia dispose of the Galphin lands? She granted some of them as bounties to her revolutionary soldiers, (what part or proportion we have no means of knowing,) and the balance were granted to her own citizens as head-rights for settlement. It is not, therefore, true, as stated by gentlemen, that all of these lands were appropriated by Georgia

for the common defence and the common good of all the States. If, however, she had granted all these lands to her revolutionary soldiers, she would then have done nothing more than all the original States did, with the solitary exception of Connecticut. They all held vacant and unappropriated lands, and all made grants, with the above exception, of bounties to their soldiers. None of them have received indemnity from the General Government for these appropriations. Why, then, should Georgia be paid? What superior claims has she? She appropriated the lands for the benefit of her own citizens, and became bound to pay Galphin's debt, upon every principle of equity and justice.

Again: if the United States were liable upon this ground, Congress passed an act in 1790, creating a Board of Commissioners, to receive, audit, and allow the claims of all the States for expenditures made by them during the Revolution, for the common defence of all the colonies. That board settled with Georgia in 1793, and found due her between nineteen and twenty thousand dollars. Of this sum Galphin's debts did not constitute a part, and was not considered by Georgia a claim which the United States should pay. Nor has the State of Georgia ever thought that the United States should pay it. Galphin's representatives have asked payment of the Georgia Legislature for more than fifty years. The case has been argued and reargued in both branches of the Legislature. In 1839, the Legislature of that State appointed three able and distinguished lawyers, (one of whom was Judge Lumpkin, now on the Supreme Court Bench) to examine the case and report at a subsequent meeting of the Legislature, upon its merits. They did so, but did not report the liability either upon Georgia or the General Government. A resolution was introduced in the Legislature of that State in 1838, instructing their Senators and requesting their Representatives in Congress to ask payment of the General Government, but that resolution was voted down by an overwhelming majority. If, therefore, the United States had been under any obligations to pay this claim, it is fair to presume that Georgia, whose rights were involved, a (State always jealous of her rights,) would in the course of fifty years' investigation, conducted by her ablest men, have discovered that liability.

According to the opinion of the Attorney General, there has not been a lawyer of "*well-earned reputation*" in the State of Georgia since the days of the Revolution; for he says in his testimony before the committee:

"I hope I may be permitted to add, in justice to myself, that the opinion I gave [in the Galphin case] was, in my own judgment, the only one which any lawyer of well-earned reputation could have given, and that its effect upon the Treasury was a subject which I should have been false to my duty to have considered."

Georgia could not discover any liability on the United States on this ground, and could not, according to his opinion, have had lawyers of "well-earned reputation." I hope I may be permitted to add, that the present Attorney General did not adopt in this case one practice generally adopted by lawyers of well-earned reputation, that is, to examine all the papers in a case before giving an opinion upon it. He says in his testimony before the committee:

"Except, therefore, so far as they are material to the legal question upon which his advice and opinion is requested, the Attorney General has nothing to do with any of the facts or circumstances which the bundle of papers presented may disclose. In this instance I neither looked for, nor saw accidentally or otherwise, any other facts or circumstances, except those bearing on the questions of law submitted to me; and, as I have before stated, never dreamed, until learning it in the way I have mentioned, that Governor Crawford had, whilst the case was before me, or had had at any antecedent period, any connection whatsoever with the claim."

If he had examined all the papers in this case, he would have discovered Mr. Crawford's connection with it, as agent or attorney. Even lawyers of "*well-earned* reputation" should get all the material facts of a case before they venture an opinion on it which is likely to control the action of one of the departments of the Government. The bundle of papers in this case furnished the only evidence of the facts. How could the Attorney General know the contents of the papers without examining them, unless gifted with supernatural powers?

Whether the connection of Mr. Crawford with the claim was a material fact which it was incumbent on the Attorney General to learn, I will submit to the country to decide.

The second ground relied on by the Attorney General, to sustain the erroneous position that the United States were liable for this debt, is, that Georgia, in 1802, ceded to the United States all that territory which now forms the States of Alabama and Mississippi. The United States agreed, as a part of the consideration for this grant or cession, to extinguish the Indian title to all the remaining lands within the State of Georgia. Therefore, the United States were bound to extinguish the Indian title to the Galphin lands, says the Attorney General. The Indian title was but the title of occupancy or possession, and it was this alone the United States were bound by the cession of 1802 to extinguish. The Indian title to these lands was extinguished by the treaty of 1773, and the lands themselves had been in possession of the whites for nearly thirty years before the cession of

1802 was made. See the following extracts from the report of the minority of the Investigating Committee:

"The Indians set up no claim to them, (Galphin lands,) but they did to other lands, the occupancy of which they either retained or claimed; and these were the lands which Georgia sought to have relieved. The title of occupancy was the Indian title, and it was the title of occupancy which she conditioned should be extinguished.

"The ultimate fee, encumbered with the right of Indian occupancy, was in the Crown previous to the Revolution, and in the States of the Union afterwards, and subject to grant.—(Clark, *vs.* Smith, 13 Peters, 195. See United States Statutes at Large, Indian Treaties, 11.)

"Indian possession or occupation, was considered with reference to their habits, &c., and their rights were as such respected until they abandoned them, made a cession to the Government, or an authorized sale to individuals. In either case their rights became extinct, &c. Such was the tenure of Indian lands by *the laws of* (all the original thirteen States as well as) *Georgia*.—(Cherokee Nation *vs.* The State of Georgia, 5 Peters, 1.)

"The *laws of Georgia* thus acknowledged no Indian title to the Galphin lands. Then, by what reasoning can we attach a meaning to the phrase in the deed of cession of 1802, which the laws of Georgia herself deny? To come directly to the case, had the Indians a right, in 1848, to pay Galphin, and resume *pro tanto* their title in the lands?

"The stipulation of 1802 was inserted by Georgia. It was inserted for her benefit; and for the purposes of this case, it will be admitted that she knew whether it was intended to cover the Galphin claim; whether she held those lands by an "Indian title" within her meaning, as expressed in the agreement of 1802. What is her testimony? Uniformly and constantly she has denied her own obligation for the debt; and when asked to recommend its payment by the Government of the United States, she has refused. Such has been her construction of the obligations of the United States towards her. She was the party in interest; the obligation was due to her; she knew the title which she intended to describe, and she denied its existence in regard to the lands encumbered by Galphin's claim. This alone disposes of the case."

What are the facts with reference to the other lands in that State claimed by the Indians? By various treaties made between the United States and the Indian tribes, (as the treaty of Indian Springs, in 1821; the treaty of Indian Springs, in 1825; of New Echota, of 1835; and others,) the Indian title to all the lands within the State of Georgia was extinguished by the United States, before Galphin ever applied to this Government for the payment of his debt. The obligations imposed, therefore, on the United States by the cession of 1802, had been fully and completely discharged. How, then, can it be said by the Attorney General, or any one else, that the United States were bound by the cession of 1802 to pay Galphin's claim?

It is next assumed that this claim, from its analogy to the Virginia commutation cases, bears the same relation to the General Government, and that the Government is equally bound to pay it. If this assertion be true, that they are in all respects alike, justice would seem to demand that the General Government, the common guardian and protector of all the States, should do for Georgia what it did for Virginia in 1832. But to my mind, there is not the slightest resemblance between the two cases. What were the Virginia commutation cases? The State of Virginia agreed to pay certain officers of that State, who had served in the Revolution, half-pay for life; (the same compensation which officers in the continental line received.) This half-pay was afterwards commuted for five years' full pay. The General Government, by act of Congress passed in 1832, assumed the payment of this debt, and relieved Virginia. Virginia had paid some of the cases; judgments had been obtained against her in others, before the General Government relieved her from this obligation. The debt had been acknowledged by Virginia, her liability had been fixed, the class of cases identified, and many of them reduced to judgments. Is this true with regard to Galphin's claim? Georgia has refused for nearly sixty years to pay it—to acknowledge her liability, or to recommend to the General Government to pay it. The claim was not reduced to judgment, or liquidated in amount, until it was paid by this Government. It is true, that a certificate was issued by the Governor and Council of the colony of Georgia, in 1775, to Galphin, for £9,791 15s. 5d., the amount of his debt. In 1780 the Legislature of Georgia passed an act, from the 23d section of which the following language is taken:

"That any person having, or pretending to have, any such claim, (alluding to the Indian traders, Galphin, and others,) do lay their claims and accounts before this or some future House of Assembly, to be examined; and whatever claims shall be found just and proper, and due to the friends of America, shall be paid by Treasury certificates for the amount, payable within two, three, and four years, and carrying six per cent. interest."

This law is general in its terms, and does not provide for the payment of Galphin's debt by name, but leaves him on a footing with the balance of the traders. The act does not recognize his claim as settled in amount or adjudicated by the Governor and Council who issued him the certificate on the 2d of May, 1775. The act requires him, in common with the balance of the traders, to bring his claim before the Legislature, to be examined and allowed if found just and proper. The Legislature of Georgia, therefore, by the act of 1780, repudiated the idea that his claim had been adjudicated. This act, which has been frequently referred to in this discussion, provides for the payment of these debts by instalments of two, three, and four years, for which certificates should issue, bearing six per cent. interest. There is nothing said, therefore, in the act about paying interest on these debts until after

they should have been allowed by the Legislature of that State. The interest was then to be paid on the instalments, because the debt which was thus to be acknowledged due by the State, was to be postponed for two, three, and four years. What analogy is there between these *cases*? Virginia had bound herself to pay, and Georgia had refused to bind herself or pay the debt uniformly and invariably from 1780 to 1839—the date of the last application to her Legislature. The debt was ascertained in one case, and was not in the other. Hence, they differ in every essential feature. The Virginia commutation cases neither form a precedent nor furnish an authority for the payment of this claim.

The obligation assumed by Georgia in passing the act of 1780 was conditional to pay a debt, provided it should be found to exist, and to be just and proper against that State. But the act of 1780 does not admit its existence or its justice against the State, and from that time to the present, the State has never admitted it.

Having thus briefly examined the grounds taken by the Attorney General, and friends of the claim, to show that the United States were bound to pay it, I shall pass on to another branch of the subject.

Did the act of Congress of 1848 fix the liability of the General Government for the Galphin debt —the principal? The act is in the following language:

"That the Secretary of the Treasury be, and he is hereby, authorized and required to examine and adjust the claim of the late George Galphin, under the treaty made by the Governor of Georgia with the Creek and Cherokee Indians, in the year seventeen hundred and seventy-three, and to pay the amount which may be found due to Milledge Galphin, executor of the said George Galphin, out of any money in the Treasury not otherwise appropriated."

I hold that this act made it the duty of the late Secretary to pay the principal—forty-three thousand five hundred and eighteen dollars and ninety-seven cents, Georgia currency. The language of the law is clear, and may be said to be somewhat imperative as to payment of the debt or principal. The select committee were unanimous in the opinion that this act made it the duty of Secretary Walker to pay the principal. This point is not, therefore, in dispute; it is not questionable or debatable ground.

The next point of inquiry is the question of interest. Did the act authorize the present Secretary, in paying one hundred and ninety-one thousand three hundred and fifty-two dollars and eighty-nine cents, interest on the debt? This is the great question in the controversy. Have the acts of the officers of the Cabinet concerned in the settlement of the claim been in accordance with law; or have they usurped powers not conferred by law? This question must be determined according to the law as it now stands, and not according to what some gentlemen say it should be. The question is not what the law should be, but what is it; and have the officers obeyed it who are charged with its administration. The Treasury is placed by the Constitution under the control of Congress. The Constitution provides that no money shall be drawn from the Treasury without a law having been first passed to authorize the act. And whether interest shall or shall not be paid to claimants is a question for Congress to decide, unless they shall transfer that power to some other tribunal, or officer of the Government. Did Congress say interest should be paid on Galphin's claim? They did not. The question was not brought before them. Who, then, has decided the question of interest in this case, unless it be the Cabinet officers? To them this power was not given by the act of 1848, either in terms or by implication; and if we sanction this usurpation of power, this disregard of law and usage, the Treasury will pass from under the control of the American Congress, the Constitution become inoperative, the money of the people will be at the mercy of a cabal of irresponsible Cabinet ministers, not chosen by the people, nor directly responsible to them. Let others do as they may, I shall take my stand against such usurpations, upon the broad principles of the Constitution, and continue to war for the rights of the people, until the Government shall be brought back to the practices and precepts of the earlier and better days of the Republic. Sir, a new doctrine is about to spring up; it is now struggling for existence; it is, that the officers of this Government have the right to construe the Constitution and law for themselves, to suit their views, and that neither the people nor their representatives should call into question the correctness of their decisions or the purity of their motives. This doctrine, if established, must end in encroachments upon the rights of the people, and ultimately subvert the liberties of the country.

But let us return to the act of 1848, to show that the question of interest was not decided by Congress, nor was the power conferred on the Secretary of the Treasury to decide it, but the principal only. The interest on a debt is a thing very different and distinguishable from the debt itself. Interest is given as damages for withholding a debt which is due and ought to be paid. This distinction between the two—debt and interest—is the language of the law, and lawyers; whether they have a "*well-earned reputation*" or not, I will leave for others to determine. The first authority I will give on this point is Mr. Jefferson. In 1792

he says, in reply to the British Minister, Mr. Hammond, who was complaining that our courts had refused to give British subjects interest on debts sued on here, in violation of the following treaty stipulation: "The treaty is the text of the law in the present case, and its words are that there shall be no lawful impediment to the recovery of bona fide *debts*." He says:

"Nothing is said of *interest* on those debts; and the sole question is, whether, where a *debt* is given, *interest* thereon flows from the general principles of the law?" "Interest is not a part of the debt, but something added to the debt by way of damage for the detention of it. This is the definition of the English lawyers themselves, who say interest is recovered by way of *damages—ratione detentionis debiti*." "It appears, then, that the *debt*, and *interest* on that debt, are separate things in every country, and under separate rules. That in every country a *debt* is recoverable, while in most countries *interest* is refused in all cases; in others, given or refused, diminished or augmented, at the discretion of the judge—nowhere given in all cases, indiscriminately, and, consequently, nowhere so incorporated with the *debt* as to pass with that, *ex vi termini*, or otherwise to be considered as a determinate and *vestal* thing."

The next opinion I will cite is that of Attorney General Wirt. On page 414, Opinions of Attorneys General, he says:

"Interest is not a thing of course; it is no part of the debt; nor is it a necessary consequence of the debt. By many nations it is not allowed at all; and by those whose laws allow it among individuals, it is not allowed in every case, but only where the circumstances of the case call for its allowance, as a matter of equity in the particular case. These principles are nowhere more clearly stated, nor more ably illustrated, than in Mr. Jefferson's letter to Mr. Hammond."—(*State Papers, vol. 1, page* 304.)

I will now cite the opinion of Mr. Crittenden, given in 1841, as Attorney General of the United States, on Mr. Wood's case. The treaty of 1819, between the United States and Spain, provided in the last article that our Government should pay the citizens of theirs for property taken and destroyed by our troops in the war of 1812 with Great Britain. Congress, to carry out this obligation of the treaty, passed an act in 1834, authorizing the United States judge for Florida to decide these cases of losses, and render decrees in favor of the parties for the amounts. The act of 1834 was in this language: The judge was "authorized to receive, and examine, and adjudge all cases of claims for losses occasioned by the troops," &c. Mr. Wood was a claimant, whose case was tried by the judge, and a decree rendered in his favor for the property lost, also for interest thereon. He presented the decree here, and the officers of the Treasury refused to pay the interest, although so decreed, and referred the case to the Attorney General for his opinion. Mr. Crittenden says, in his opinion:

"Interest is a thing very distinguishable and different from the losses themselves."

Mr. Crittenden decided against the decree for the allowance of interest. He placed that decision on the ground that the act of Congress passed in 1834, giving the United States judge jurisdiction of the claims, did not give him jurisdiction of the question of interest on those claims. He states, in his opinion, that justice may have required the payment of interest on Wood's claim, but it was a question for Congress to decide, and not the judge. The language of the act of 1834, giving the United States judge the power to decide the Florida claims, is broader and more comprehensive than the act of 1848 giving the Secretary of the Treasury the power to examine and adjust Galphin's claim. And if Mr. Crittenden was right in that case, I am certainly right in this. It is a clear case, sir, that the Secretary had not the power to allow interest under the act of 1848, in my judgment.

But we will now place this question of interest on its most favorable footing for the claimant, and admit, for the sake of argument, that the act of 1848 referred both questions to the Secretary of the Treasury, to be decided by him as some gentlemen insist it did. In other words, that he had the power under that act to examine and adjust the *interest* as well as the principal. By what law, by what rules and regulations was he to be governed in deciding the question of interest? The act itself prescribed none. Certainly, if Congress referred the question to him, it did not intend that he should decide it without law, and without usage. It was, then, in view of, and with reference to the well established rules and regulations governing the department, that he was invested with this judicial power. By the laws which have governed the department since the adoption of the Constitution he was to be governed, and not by his own whims or caprice. Any other construction of the act or interpretation of the action of Congress in referring the case to him, would be absurdly ridiculous. Let us, then, try the question by the rules of the department, and see if interest can be allowed. The first regulation is, that the Government does not, as a general rule, pay interest on its debts. The reason of the rule is, that the Government is always ready and willing to pay all just demands, when presented properly authenticated and established; and if claims against it are not paid, it is the fault of the party holding them, and not of the Government. This rule is founded in a wise policy, and is necessary for the protection of the Treasury. Galphin's claim had its origin, it will be recollected, prior to 1773, and was presented to this Government for payment for the first time in 1836 or 1837, and allowed in 1848. Why was this debt, which gentlemen say was honest, just, and fair, and always good against the General

Government, held back for upwards of sixty years; and how is it to be exempted from this general rule, which cuts off interest before a claim is presented and established against the Government? There is no escape from this rule. The law raises a strong presumption against old claims, which it is incumbent on the party to explain satisfactorily. Such explanation has not and cannot be given in this case.

In the case of Major Tharp, (Opinions of Attorneys General, page 841,) Mr. Taney, then Attorney General, says:

"As the United States are always ready to pay when a 'claim is presented, supported by proper vouchers, it can 'rarely, if ever happen that they are justly chargeable with 'interest; because it is the fault of the claimant if he delays 'presenting his claim, or does not bring forward the proper 'vouchers to prove it and justify its payment."

In Mr. Jefferson's letter to Mr. Hammond, of 1792, Mr. Jefferson says:

"And where the creditor prevents payment both of principal and interest, the latter, at least, is justly extinguished."

Under this general rule of the Government against the payment of interest, I am at a loss to determine how it could have been properly allowed on Galphin's claim. Of the existence of this rule there can be no doubt. It is established by the testimony of the present and late Secretaries, and all the accounting officers of the Government, who were examined before the Committee of Investigation. The opinions of the Attorneys General bear but one language on that point; and that is, to establish the rule. But it is said there are exceptions to the rule; and it is true there are. The Government pays interest when it is directed to be paid by an act of Congress, in express terms, or by clear implication. It also pays interest when it is due by contract, (expressed on the face of the contract.) It also pays interest when it is decided to be due by the Supreme Court of the United States; (the decision of other and inferior courts are not conclusive on the Government.) It is paid, too, in some cases of indemnity for losses, and sometimes by way of damages for wrongs done in certain cases. Galphin's claim falls within none of the above exceptions; and they are believed to be all. Interest was not directed to be paid by the act of Congress; was not decided to be due by the Supreme Court; not provided for by the contract, (not even by the certificate issued on the 2d May, 1775, to Galphin, for nine thousand, seven hundred and ninety-one pounds fifteen shillings and five pence;) nor is it a case of indemnity for losses, or damages for wrongs done, in which the Government sometimes pays interest. They form a different and distinct class of cases from Galphin's. There is, therefore, no precedent within the history of the Government, which I have been able to find, that would warrant the payment of interest in this case. Gentlemen insist, though, that the Government assumed the payment of the debt by the act of 1848; and that, in assuming the debt, the payment of interest was also assumed. I have already shown that this position is erroneous; that these two questions are not inseparably connected, but distinct and different, and under different rules. This is shown very clearly in Wood's case. The act of 1834 gave the judge jurisdiction of the claim, but did not, in the opinion of Attorney General Crittenden, give him jurisdiction of the interest. That case presented stronger claims, too, upon the broad principles of equity and justice for interest than this. Wood was deprived of his property in the war of 1812, and received the value of his property only in 1841 or '42, without interest.

The case of Aquila Giles established a precedent by which the officers should have been governed in this case. Congress passed an act for his relief, directing the Secretary of the Treasury to pay him a warrant which he held for five hundred dollars, balance of his pay as a Major in the Revolution, for the year 1782. He demanded interest, and the Secretary of the Treasury refused to pay it, and referred the question to the Attorney General for his opinion. Mr. Wirt, then the Attorney General, gave his opinion on the 3d of April, 1819, as follows:

"SIR: I have examined the case of Aquila Giles, and see no reason, in this instance, to depart from the usual practice of the Treasury Department. The act of Congress does not direct the payment of interest; nor does it, as in the case of Mrs. Hamilton, refer to any principles of settlement from which it can be inferred that interest was intended to be allowed. The act merely refers to the warrant for five hundred dollars as the basis of settlement: the warrant thus referred to does not carry interest on its face; and I understand it to be the sole fault of Mr. Giles himself that it has not long since been presented and paid, or funded. Interest is in the nature of damages for withholding money which the party ought to pay, and would not or could not. But here it appears, on the face of Mr. Giles's own memorial, that he has never made an application for payment; and, therefore, there has been no withholding payment against his consent.

"If Mr. Giles conceives himself to be aggrieved by the practice of the Treasury in similar cases, he has his remedy before Congress, who, if they think it equitable, can direct the payment of interest, as they did in the case of John Thompson. WILLIAM WIRT."

"To the SECRETARY OF THE TREASURY."

The difference between the two cases (Mr. Giles's and Mr. Galphin's) is this: Mr. Giles held a warrant, the validity of which had never been disputed, but uniformly admitted, so far as we have been able to learn. Mr. Galphin held but a certificate, issued by the Governor and Council of the colony of Georgia, which was repudiated by the State of Georgia as early as 1780. The difference is in favor of Mr. Giles in this particular; in other respects the analogy is more perfect. Neither was presented to the General Government until long after they had their origin. The department decided correctly in Mr. Giles's case; it decided according to law and usage; and if he felt himself aggrieved, he had his remedy by applying to Congress, as Mr. Wirt says, and asking them to direct the payment of interest. It is a question for Congress, and not for the departments to decide. So it was in Mr. Galphin's case, as well as all others. He could have brought his case before Congress, if the department had refused interest, and had its equities considered, and the question decided for or against him.

By the treaty of Indian Springs, made in 1821, between the United States and the Creek Indians, the United States assumed the payment for the Indians of two hundred and fifty thousand dollars, due to the citizens of Georgia for property which had been taken from them by the Indians. The citizens of Georgia had been deprived of their property about thirty years before payment was

made. They demanded interest on the value of the property. The question was referred to the Attorney General of the United States, who decided against interest. It is true, that among the many reasons assigned by him for the disallowance of interest, one was, that the property had been valued very high by the commissioners appointed for that purpose. Such I have no doubt was the case with Galphin's debt. The usual consideration for debts contracted with the Indians, is, beads, whiskey, and blankets, sold at an enormously high price. And, in the absence of any proof to the contrary, I am bound to believe, that Galphin adopted the usual practice of the country, coextensive with the common law, of charging double price for the articles which he sold to the Indians, and which were the consideration for this debt.

Mrs. Hamilton's case has also been cited as a precedent. Congress passed an act in 1816 for her relief. The act placed her on the same footing with the officers of the Revolution who were provided for by the resolution of Congress of 1783. Interest was allowed under the resolution of 1783, and the act of 1816 placing Mrs. Hamilton on the same footing with the officers for whom that resolution did provide, she too was entitled to interest on her husband's claim. General Hamilton, her husband, had served in the Revolution, but was not entitled under the resolution of 1783, because he did not serve until the close of the war. The object of the act of 1816 was to place his case on an equal footing with the other officers with regard to half pay. There is not, therefore, any semblance of authority in her case for the allowance of interest in this, in my opinion.

I will not trouble the House with any more authorities to sustain my positions. Suffice it to say, that I cannot find a precedent in the history of this Government, behind which the enormities of this case can find protection. It should be remembered, too, in considering this question of interest, the treaty of 1773 did not provide for its payment on Galphin's debt; that the certificate issued to him in 1775, for nine thousand seven hundred and ninety-one pounds fifteen shillings and five pence, said nothing about interest; that the memorial of the parties to Congress, asking payment of the debt, filed, I believe, in 1844, did not demand interest. Until a late period, it would seem that the parties would have been satisfied with the debt alone from this Government. But the prosecution of claims against the Government by the numerous agents who crowd the streets of this city, and hang about the halls of this House, has been reduced to a science; and new agents coming in, as Mr. Crawford did, may gather many useful ideas from this class of more experienced and skillful metropolis operators upon the national Treasury.

But you have been told, Mr. Speaker, that Galphin was a revolutionary patriot, and the Government should be liberal to him. It is true he was a patriot, and rendered good service by restraining the Indian tribes from hostilities in the Colonies of South Carolina and Georgia in the Revolution. If he did more than this, we have no evidence of the fact; if he fought, we have no knowledge of it; but that he did have considerable influence over the Indian tribes, and wielded it in behalf of the cause of the colonies, is true. His patriotism, however, can furnish no excuse for Mr. Crawford's conduct, or the other members of the Cabinet. Patriotism cannot be transferred like a bill of exchange or promissory note, to suit the purposes of those who may need it, or to cover a multitude of sins when it may be necessary to conceal them. This old patriot died seventy years ago. He has no children living, and the act of 1848 can only benefit his remote descendants and claims-agents. This appeal in behalf of patriotism and sympathy, will not apply to these parties, now the only ones in interest. It is a singular fact, too, that gentlemen whose sympathies are so easily excited in behalf of the old patriot, should sanction and approve the conduct of Mr. Crawford, who charged him one hundred and fifteen thousand five hundred and seventy-eight dollars and forty-two cents—half the amount of the whole claim—for procuring its payment, as agent or attorney. The sympathetic friends of patriotism should at least be silent as to the action of the Government, when they have so fine a theme on which to exhaust their eloquent denunciation.

I shall, Mr. Speaker, insist on the adoption of all the resolutions appended to the report of the minority, composed of Messrs. Disney, Mann, and myself. One of them affirms that Congress should pass a law prohibiting the officers of the different Departments from paying interest in any case, unless expressly directed by law to do so. Such a law is demanded by every consideration of good policy, for the safety and protection of the Treasury. It will divest the irresponsible ministers of the Executive of those discretionary and constructive powers, as they are termed, which are at all times liable to be perverted to the purposes of fraud and corruption. The concentration of power in the hands of irresponsible men, placed beyond the immediate reach and control of the people, is dangerous to liberty under any form of government, a fact too well established by the history of nations. Let us therefore arrest this dangerous tendency of things, bring back these powers to the immediate representatives of the people, in whose hands all abuses can be easily reached and corrected. The Constitution places them there, and past experience shows that it is the safest depository. I shall also insist upon the adoption of another resolution, which recommends the pasage of a law, prohibiting one member of the President's Cabinet from sitting in judgment on, and deciding a case, in which another member of the same Cabinet is interested, whilst they are thus associated together in the administration of the Government. The developments made by the investigation of this case, suggest the imperative necessity of such a law. It will close the door against temptation and fraud from one quarter at least. It is the true policy of the Government, too, to place additional guards around the Treasury, rather than weaken those raised by the Constitution. The evidence taken by the Committee of Investigation will convince any one of the propriety of this law. Judge Bryan, who is the friend, and was the sub-agent of Governor Crawford, prosecuting the Galphin claim, was employed at the same time to attend to a case for Captain Schaumburg, before the War Department, as his agent or attorney. After an absence of some considerable time, Captain Schaumburg called upon Mr. Bryan, his agent, to ascertain what progress

he had made in his case before the War Department. What Bryan's answer was to Schaumburg, I will let the following extract from his (Bryan's) testimony before the Investigating Committee furnish:

"I am inclined to think, that when Mr. Schaumburg came here, in the confidence between counsel and client, I stated that I had not pressed his claim, as I desired to do it when the Secretary of War, before whom it was, was in a good humor; that he was interested as counsel in a cause then before the Attorney General; that I was representing the claim since Crawford came into the Cabinet; that I felt perfectly confident the decision would be a favorable one; and that, if it was decided in his favor, he would get a good fee, and that would put him in a good humor, and that it would be a good time to press his (Schaumburg's) claim. This was said in that confidence which subsists between counsel and client. I have no recollection of stating that Mr. Crawford was mutable, and am confident I did not so say."

Now, if this testimony of Bryan means anything at all, it is, that he (Bryan) expected Crawford to make a different decision on Schaumburg's case after Galphin's claim should be decided, and he should get a large fee, and be in a good humor, from the one which he would make, while Galphin's case was pending before the Attorney General undecided; therefore he held it back. In other words, that the decisions of the Secretary of War would depend very much, or would be influenced very much, by his peculiar state of mind and feelings brought about by his success in getting large fees. This would be a lamentable state of affairs, and, if true, it would be good policy for Congress to employ a kind of *Cabinet thermometer* in the person of a claims-agent, to tell the state of feeling of these official dignitaries, when they are in a good humor, and when in a bad one; when they are under the influence of big fees, and when not; and how long the influence of a fee of one hundred and fifteen thousand dollars will last. This will be necessary, because many of our constituents have business before these departments, and some of them important business, and they would like to know when it would be a favorable time to present their cases and have them decided.

This prohibitory law is more necessary, because the President of the United States has sanctioned and approved the relation of the Secretary of War to this case. That there may be no doubt about this, I will give the following extracts touching the point, from Mr. Crawford's statement before the Committee of Investigation:

"Such was the condition of the claim when I became a member of the present Cabinet.

"The legal representatives and heirs of Galphin insisted on the settlement of the claim, and, as my interest was contingent and secondary, I did not deem that I could postpone it. Accordingly, in the month of May, 1849, I went and disclosed to the President the condition of the claim, and my relation to it. I stated to him that I had been prosecuting this claim, before Congress and elsewhere, since the year 1833; that I had an interest in it; that it had been allowed by Congress, and was pending before the Treasury Department. He replied, that he did not consider, by the acceptance of office, any of my preëxisting individual rights had been curtailed."

In May, 1850, when the Investigating Committee had brought their labors nearly to a close, Mr. Crawford makes the following communication to it:

"WASHINGTON, *May* 8, 1850.

"SIR: Having repeated the substance of a conversation with the President in May of the past year, I now beg leave to add the substance of another, so as to avoid all misapprehension on the subject. I allude to an interview with him early in March last.

"In this second interview the President said, that the impression upon his mind was, that in the first I had stated to him that the claim was before Congress; although as to this his recollection was indistinct, the matter having passed from his mind and never thought of again until the claim itself had attracted public notice. The President on the second occasion also said, that although he did not recollect I had before advised him that the claim had been allowed by Congress, and was pending before the Treasury Department, yet that he did not see, if so informed, how he could have advised me differently from the opinion he had before given—that my being at the head of the War Department and the agent of the claimants, did [*not?*] take from me any rights I may have had as such agent, or would have justified me in having the examination and decision of the claim by the Secretary of the Treasury suspended; that, in his opinion, if the claim was a just one under the law of Congress, it should have been paid, no matter who were the parties interested in it; that this was due to the credit and good faith of the Government.

"I have the honor to be, very respectfully, your obedient servant,

G. W. CRAWFORD.

Hon. A. BURT, *Chairman, &c., Washington, D. C.*

It is therefore evident, that Mr. Crawford, soon after entering the Cabinet, went to General Taylor and informed him of the relation he bore to this claim, with the view of getting his opinion and advice upon the propriety of his continuing that relation, after he had entered the Cabinet. General Taylor replied, that he did not consider that Mr. Crawford, by the acceptance of office, as a member of the Cabinet, had curtailed any of his pre-existing individual rights. This was not only a sanction of what Mr. Crawford has done, but would have justified him in going further than he did. What were his preëxisting individual rights before entering the Cabinet? One was, to prosecute this claim, as the agent or attorney of Galphin, either before Congress or any other department of the Government—a right, the exercise of which would have involved no impropriety or indelicacy. The declaration of General Taylor to Mr. Crawford, in May, 1849, in their first interview, would have justified him (Crawford) in going on and prosecuting it before the Treasury Department, in person. General Taylor, in their second interview, in March, 1850, repeats, substantially, the same declaration. Mr. Crawford did not, therefore, avail himself fully of the President's license, for he employed Judge Bryan to appear before the departments and prosecute the claim. Mr. Crawford retained his interest in it, and assisted Judge Bryan in preparing his arguments, but neither appeared before the departments himself, as the agent, nor did he communicate his interest or agency either to the Secretary of the Treasury or Attorney General; nor did he authorize any one else to communicate it to them. It is to prevent the recurrence of another case in which a Cabinet officer shall decide upon a claim in which one of his colleagues shall be interested, and to dissent from the opinion said by the Secretary of War to have been given him by the President of the United States, that I shall insist on the adoption of my resolutions, and the passage of the laws they recommend. A precedent of such dangerous tendency should not be approved either by Congress or the honest freemen of the country.